Federal Communications Commission
Washington, D.C. 20554

September 29, 2023

VIA ELECTRONIC MAIL

Theodora Scarato
Environmental Health Trust
[redacted]
theodora.scarato@ehtrust.org

RE: FOIA Control Nos. 2023-000281 and 2023-000325

Dear Ms. Scarato,

This letter responds to your Freedom of Information Act (FOIA) requests, FOIA Control No. 2023-000281 and FOIA Control No. 2023-00325. Your request FOIA Control No. 2023-000281 seeks "any and all SAR tests or documentation of SAR tests for any cellphones, including but not limited to the BLU phones, that the FCC tested to determine regulatory compliance for SAR. Please send all SAR Reports, as well as all documentation of the SAR test findings. Please also send the emails and attachments between FCC staff related to the findings of the SAR tests for cell phones. Any SAR tests done by the FCC related to cell phones on the US market January 2017 through April 2020."[1] Your request FOIA 2023-000325 seeks "all SAR tests, the full reports, the measurements, any images and name of staff person doing tests and date done by [the Office of Engineering and Technology (OET)] (not the manufacturer) on cell phones in the year 2019."[2]

As a general matter, you can find SAR testing records in the Equipment Authorization Database on our webpage at https://apps.fcc.gov/oetcf/eas/reports/GenericSearch.cfm. If you can identify the FCC ID numbers for the equipment you describe, you can look up the details of the grant. Enter the first three characters of the FCC ID Number as the grantee code and the rest including hyphens as the product code. You can also search by the manufacturer. Enter the manufacturer's name in the Applicant Name field to populate the results.

Specific to your FOIA requests, OET and the Enforcement Bureau (EB) conducted a search and found 18 records responsive to your request. Many of these records relate to an article published by the *Chicago Tribune* on August 21, 2019, claiming several popular cell phones exceed the FCC's guidelines for RF exposure. The *Chicago Tribune*, through an independent accredited lab, RF Exposure Lab, LLC, had tested devices manufactured by Apple, BLU Products, Motorola, and Samsung to arrive at the conclusion in the article. Because we take seriously any claims of non-compliance with RF exposure standards, the FCC tested the same device models at our Lab. The FCC's tests confirm that all tested sample devices comply with the FCC's strict RF exposure guidelines.

[1] FOIA Control No. 2023-000281 (submitted January 30, 2023).

[2] FOIA Control No. 2023-000325 (submitted February 8, 2023).

We did not have access to the actual phones tested by the test lab used by the *Chicago Tribune*. The FCC Lab, therefore, obtained the same makes and models of these phones (where available), both from suppliers and on the open market. We tested the devices manufactured by Apple, BLU Products, Motorola, and Samsung at a 5mm separation distance, consistent with our published guidance.[3] These tests were conducted consistent with the FCC Lab normal practices and the RF exposure compliance report for each phone that is publicly available in the application for certification in the Equipment Authorization System. These devices all complied with the FCC limits for RF exposure, limits that have a significant safety margin. With this letter, we release the test results.

Separately, and only for purposes of comparison with the *Chicago Tribune* results, the FCC Lab tested the devices with a separation distance at which the *Chicago Tribune* tested its devices, i.e., at 2 mm separation distance. We observed that at a 2 mm separation distance, the FCC RF exposure limits were exceeded, and found that the *Chicago Tribune* results at the 2 mm separation distance were even higher than what we observed. With this letter, we release our 2 mm separation distance test results with the caveat that the 2 mm separation distance test results are inconsistent with FCC practice,[4] and are misleading because they reflect extreme conditions. Notwithstanding the foregoing, given that the RF exposure limit includes a significant safety margin, none of the results suggest there is any RF safety issue with the devices tested.

We also stress that cell phones operate under the control of the wireless networks to which they are connected. We believe that the *Chicago Tribune* tests did not use the appropriate wireless network control codes to set the phone in the proper modes for operation for the U.S. This may have disabled the various sensors or caused the network simulator to not control the phone's transmitters properly for operation in the U.S.

With that explanation, in response to your FOIA requests, out of the 18 documents located, we are releasing 11 records in full with no redactions. We are withholding the remaining seven records in full under FOIA Exemption 5. Exemption 5 protects certain inter-agency and intra-agency records that are normally considered privileged in the civil discovery context.[5] Exemption 5 encompasses a deliberative process privilege intended to "prevent injury to the quality of agency decisions."[6] To fall within the scope of this privilege the agency records must be both pre-decisional and deliberative.[7] Pre-decisional records must have been "prepared in order to assist an agency decision maker in arriving at his decision."[8]

---

[3] KDB 447498 D01 General RF Exposure Guidance v06 specifies the 5 mm minimum test separation distance. https://apps.fcc.gov/kdb/GetAttachment.html?id=f8IQgJxTTL5y0oRi0cpAuA%3D%3D&desc=447498%20D01%20General%20RF%20Exposure%20Guidance%20v06&tracking_number=20676 at 11 ("Devices that are designed to operate on the body of users … without requiring additional body-worn accessories must be tested for SAR compliance using a conservative minimum *test separation distance* ≤ 5 mm to support compliance" (emphasis in original); *see also* KDB 648474 D04 Handset SAR v01r03, at 3, https://apps.fcc.gov/kdb/GetAttachment.html?id=zCDu9bDcV8fcsumpj%2Bef3w%3D%3D&desc=648474%20D04%20Handset%20SAR%20v01r03&tracking_number=33853 (citing KDB 447498 D01 General RF Exposure Guidance v06).

[4] *See*, *e.g.*, KDB 447498 D01 General RF Exposure Guidance v06, *supra* note 3.

[5] 5 U.S.C. § 552(b)(5).

[6] *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975).

[7] *Id.* at 151-52.

[8] *Formaldehyde Inst. v. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1122 (D.C. Cir. 1989); *see also Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980) ("In deciding whether a document should

Deliberative records must be such that their disclosure "would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions."[9]

The records withheld under Exemption 5, constituting internal documents and emails, contain pre-decisional internal deliberations among Commission staff. These records include staff summaries, pre-decisional discussion of the merits of information provided by third parties, preliminary thoughts of agency staff regarding policy, and general discussion of internal staff questions and viewpoints. Particularly, the withheld records implicate sensitive matters that require particular candor in the advice given to decision makers, which would be discouraged by the public release of the advice. We have determined that it is reasonably foreseeable that disclosure would harm the Commission's deliberative processes, which Exemption 5 is intended to protect. Release of this information would chill deliberations within the Commission and impede the candid exchange of ideas.

We are required by both the FOIA and the Commission's own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought-after information.[10] To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.[11]

Pursuant to section 0.466(a)(5)-(7) of the Commission's rules, you have been classified as category (2), "educational requesters, non-commercial scientific organizations, or representatives of the news media."[12] As an "educational requester, non-commercial scientific organization, or representative of the news media," the Commission assesses charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. The production in response to your request did not involve more than 100 pages of duplication and is being provided in electronic form. Therefore, you will not be charged any fees.

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.[13] You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 45 L Street NE, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as "Review of Freedom of Information Action."

---

be protected by the privilege we look to whether the document is . . . generated before the adoption of an agency policy and whether . . . it reflects the give-and-take of the consultative process. The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents . . . .").

[9] *Formaldehyde Inst.*, 889 F.2d at 1122 (quoting *Dudman Commc'ns Corp. v. Dep't of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987)).

[10] *See* 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470.

[11] 47 CFR § 0.470.

[12] 47 CFR § 0.466(a)(5)-(7).

[13] 47 CFR §§ 0.461(j), 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission's FOIA Public Liaison for assistance at:

FOIA Public Liaison
Federal Communications Commission
Office of the Managing Director
Performance Evaluation and Records Management
45 L Street NE, Washington, DC 20554
202-418-0440
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road–OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
https://www.archives.gov/ogis

Sincerely,

Ronald T. Repasi
Chief
Office of Engineering & Technology

Attachments

cc: FOIA Office, EB